

1 the causes of action or claims derived from federal law and those
2 arising under state law, as herein alleged, arose from a common
3 nucleus of operative facts. The common nucleus of operative facts,
4 include, but are not limited to, the incidents whereby plaintiff
5 was denied full and equal access to Defendant's facilities, goods,
6 and/or services in violation of both federal and state laws when
7 plaintiff attempted to enter, use, and/or exit Defendant's
8 facilities as described within this Complaint. Further, due to
9 this denial of full and equal access Plaintiff and other person's
10 with disabilities were injured. Based upon such allegations the
11 state actions, as stated herein, are so related to the federal
12 actions that they form part of the same case or controversy, and
13 the actions would ordinarily be expected to be tried in one
14 judicial proceeding.

15 **PARTIES**

16 2. Defendants, **FASHION CLEANERS AND KERMIT R. ENGH** are and at all
17 times herein mentioned was a duly organized business, association,
18 or corporation duly authorized to exist and operate within the
19 State of Nebraska and County of Douglas and the owner, lessee, or
20 tenant of the premises located at **3031 LEAVENWORTH STREET, OMAHA,**
21 **NE 68105.**

22 3. Plaintiff is informed and believes and thereon alleges that
23 defendants **KERMIT R. ENGH** is the owner and/or landlord of defendant
24 **FASHION CLEANERS.**

25 4. Plaintiff is informed and believes and thereon alleges that
26 each of the named defendants herein operates a business and
27 or/facility of public accommodation as defined and described
28 within 42 U.S.C. 12181(7)(A) through (L) of the American with

1 Disabilities Act [ADA] and as such must comply with the ADA under
2 provisions of Title III therein.

3 5. Plaintiff is ignorant of the defendants sued as Does 1-5
4 herein, and therefore sues them in their fictitious names as Doe
5 defendants. Plaintiff is informed and believes and thereon alleges
6 that Does 1-5 are the owners, operators, lessees or tenants of the
7 subject property and each of the Doe defendants at all times
8 herein was acting as the agent and or representative of each other
9 and thereby are responsible in some manner for the injuries and
10 damages complained of herein. Plaintiff will seek leave of court
11 to amend this complaint to name Doe defendants when the same is
12 ascertained.

13 **GENERAL ALLEGATIONS COMMON TO ALL CLAIMS**

14 6. Plaintiff is who is disabled and has limited mobility when
15 walking and standing. He has limited control over his lower
16 extremities but is able to transport himself and to affect the
17 basic necessities of his everyday existence. Plaintiff's
18 disability substantially limits one or more of life's major
19 activities and therefore she is disabled as defined under 42 USC
20 12102(2) (A) (B) (C) .

21 7. On or about **September 8, 2015**, plaintiff attempted to enter the
22 subject premises of the defendants herein to utilize goods and/or
23 services offered by defendant **FASHION CLEANERS**. When Plaintiff
24 attempted to enter the commercial building he had difficulty
25 entering and using the facility because it failed to comply with
26 federal ADA Access Guidelines For Building and Facilities
27 [hereinafter "ADAAG"]
28

1 8. The specific difficulty Plaintiff had in entering and utilizing
2 Defendants' facility and which amount to a violation of ADAAG are:

3 **(a) Designated disabled parking spaces are insufficient and in**
4 **violation of ADAAG section 4.6.**

5 **(b) Failure to provide adequate access aisle in violation of ADAAG**
6 **4.6.3**

7 **(c) Failure to provide disabled parking space signage at proper**
8 **height in violation of ADAAG 4.6.4**

9 **(d) Failure to provide unobstructed view of disabled parking**
10 **signage in violation of ADAAG 4.6.4**

11 9. Based upon the above facts, Plaintiff as been discriminated
12 against and will continue to be discriminated against unless and
13 until Defendants are enjoined and forced to cease and desist from
14 continuing to discriminate against Plaintiff and others similarly
15 situated.

16 10. Pursuant to federal [ADA}, Defendants are required to remove
17 barriers to their existing facilities. Defendants have been put on
18 notice pursuant to the ADA prior to the statutory effect of the
19 ADA on January 26, 1992 that Defendants and each of them had a
20 duty to remove barriers to persons with disabilities such as
21 plaintiff. Defendants also knew or should have known that
22 individuals such as plaintiff with a disability are not required
23 to give notice to a governmental agency prior to filing suit
24 alleging Defendants' failure to remove architectural barriers.

25 11. Plaintiff believes and thereon allege that Defendants'
26 facilities, as described herein, have other access violations not
27 directly experienced by Plaintiff, which preclude or limit access
28 by others with disabilities. Accordingly, Plaintiff alleges

Defendants are required to remove all architectural barriers, known or unknown. Also, Plaintiff alleges Defendants are required to utilize the ADA checklist for Readily Achievable Barrier Removal approved by the United States Department of Justice and created by Adaptive Environments.

12. Plaintiff desires to return to Defendants' places of business and utilize their facilities without being discriminated against in the immediate future.

IV

FIRST CAUSE OF ACTION

(Violation of Civil Rights-American With Disabilities Act)

13. Plaintiff realleges the allegations in paragraphs 1 through 12 as though set forth fully herein.

Claim 1: Denial of Full and Equal Access

14. Based on the facts asserted above Plaintiff has been denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations. Defendant **FASHION CLEANERS** is a public accommodation owned, leased and/or operated by Defendants and each of them. Defendants' existing facilities and/or services failed to provide full and equal access to Defendants' facility as required by 42 U.S.C. section 12182(a). Thus, Plaintiff was subjected to discrimination in violation of 42 U.S.C. 12182(b)(2)(A)(ii)(iv); 42 USC 1981 and 42 U.S.C. section 12188 because Plaintiff was denied equal access to Defendants' existing facilities.

15. Plaintiff has a physical impairment as alleged herein because her condition affects one or more of the following body systems:

1 neurological, musculoskeletal, special sense organs, and/or
2 cardiovascular. Further, his physical impairments substantially
3 limits one or more of the following major life activities. In
4 addition, Plaintiff cannot perform one or more of the said major
5 life activities in the manner speed, and duration when compared to
6 the average person. Moreover, Plaintiff has a history of or has
7 been classified as having a physical impairment as required by 42
8 *U.S.C. section 12102(2) (A)*.

9 **Claim 2: Failure To Remove Architectural Barriers**

10 16. Based upon the facts alleged herein, Plaintiff was denied
11 full and equal access to Defendants' goods, services, facilities,
12 privileges, advantages, or accommodations within a public
13 accommodation owned leased, and/or operated by the named
14 Defendants. Defendants individually and collectively failed to
15 remove barriers as required by 42 *U.S.C. 12182(a)*. Plaintiff is
16 informed and believes, and thus alleges that architectural
17 barriers which are structural in nature exist at the following
18 physical elements of Defendants' facilities:

19 Space Allowance and Reach Ranges, Accessible Route, Protruding
20 Objects, Ground and Floor Surfaces, Parking and Passenger Loading
21 Zones, Curb Ramps, Ramps Doors, Entrances, and Signage. Pursuant
22 to 42 *USC section 12182(b) (2) (iv)*, Title III requires places of
23 public accommodation to remove architectural barriers that are
24 structural in nature within existing facilities. Failure to remove
25 such barriers and disparate treatment against a person who has a
26 known association with a person with a disability are forms of
27 prohibited discrimination. Accordingly, Plaintiff was subjected to
28

1 discrimination in violation of 42 U.S.C. 12182(b)(2)(A)(iv) and 42
2 U.S.C. 12182 (b)(2)(A)(iv); 42 U.S.C. 1981 and 42 U.S.C. 12188.

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4 **Claim 3: Failure To Modify Practices, Policies And Procedures**

5 17. Based on the facts alleged in this Complaint Defendants failed
6 and refused to provide a reasonable alternative by modifying its
7 practices, policies and procedures in that they failed to have a
8 scheme, plan, or design to assist Plaintiff and/or others
9 similarly situated in entering and utilizing Defendants' services,
10 as required by 42 U.S.C. section 12188(a). Thus, Plaintiff was
11 subjected to discrimination in violation of 42 U.S.C. section
12 12182(b)(2)(A)(iv); 42 U.S.C. 1981 and 42 U.S.C. section 12188
13 because Plaintiff was denied equal access to Defendants' existing
14 facilities.

15 18. As a result of the wrongful and discriminatory practices of
16 defendants, plaintiff has suffered actual damages consisting of
17 special damages and general damages in an amount to be determined
18 at time of trial herein.

19 19. Pursuant to the provisions of 42 U.S.C. 12188 plaintiff seeks
20 injunctive relief and an order directing defendants to cease and
21 desist from discriminating against plaintiff and others similarly
22 situated and for an order that defendants comply with the
23 Americans With Disabilities Act forthwith.

24 20. Under the provisions of 42 U.S.C. 12205 plaintiff is entitled
25 to an award of reasonably attorneys fees and costs and requests
26 that the court grant such fees and costs as are appropriate.

SECOND CAUSE OF ACTION

(Violation of Civil Rights 42 U.S.C. 1991)

21. Plaintiff realleges the allegations of the First Cause of Action as though set forth fully herein.

22. The provisions of 42 U.S.C. 1981 (As amended by the Civil Rights Act of 1991) provide that Plaintiff as a person with disabilities cannot be discriminated against with regard to the ability to enter into, to make or to enforce contracts. In enacting the Civil Rights Act of 1991 congress established a three tier system of remedies for a broad range of discretionary conduct, including violations of the Americans With Disabilities Act, wherein disabled individuals such as plaintiff are denied equal access to facilities they wish to conduct business in and therefore are precluded from making, entering into and enforcing contracts that plaintiff and others similarly situated may desire to effect.

23. Defendants, because they have individually and/or collectively denied plaintiff access to their premises, goods and services, have denied him the right to make, enter into or enforce a contract and therefor have violated the provisions of 42 U.S.C. 1991 all to Plaintiff's damage in an amount to be determined at time of trial herein.

24. As a result of Defendants' actions Plaintiff was humiliated, embarrassed and discouraged and upset emotionally and physically and suffered damages according to proof.

25. By reason of Defendants' actions Plaintiff was caused to incur costs and expenses of litigation, including attorney's fees, to seek and redress his civil rights. Plaintiff therefore seeks an

1 award of costs and attorney's fees associated with the necessity
2 of brining this lawsuit.

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4 **THIRD CAUSE OF ACTION**

5 **(Violation Of Civil Rights Under Nebraska Accessibility Laws)**

6 26. Plaintiff realleges the allegations of the Second Cause of
7 Action as though set forth fully herein.

8 **(a) Denial Of Full And Equal Access**

9 27. Plaintiff has been denied full and equal access to Defendants'
10 goods services, facilities, privileges, advantages, or
11 accommodations within a public accommodation owned, leased, and/or
12 operated by Defendants in violation of *Neb. Rev. Stat. 20-132*.

13 **(b) Failure To Modify Practices, Policies And Procedures**

14 28. Defendants have failed and refused and continue to fail and
15 refuse to provide a reasonable alternative to allow plaintiff
16 equal access to their facility by modifying their practices,
17 policies, and procedures in that that they failed to have s
18 scheme, plan, or design to assist Plaintiff and others similarly
19 situated in entering and utilizing Defendants' goods or services.
20 Accordingly Defendants have wrongfully discriminated against
21 Plaintiff.

22 **FOURTH CAUSE OF ACTION**

23 **(Violation of Civil Rights Act)**

24 29. Plaintiff realleges the allegations of the Third Cause of
25 Action as though set forth fully herein.

26 30. Defendants are in violation (b) by failing and refusing to
27 provide free and equal access to Plaintiff to their facility on
28 the same basis as other persons not disabled. By their failure to

1 provide equal access to Plaintiff as herein alleged, Defendants
2 have also violated 42 U.S.C. section 12182(b) (2) (A) (iv)

3 31. Defendants and each of them, at all times prior to and
4 including **September 8, 2015**, respectively and continuing to the
5 present time, knew that persons with physical disabilities were
6 denied their rights of equal access to all portions of this public
7 facility. Despite such knowledge, Defendants, and each of them,
8 failed and refused to take steps to comply with the applicable
9 access statutes and despite knowledge of the resulting problems
10 and denial of civil rights suffered by Plaintiff and other
11 similarly situated persons with disabilities.
12

13 32. Defendants and each of them have failed and refused to take
14 action to grant full and equal access to person with physical
15 disabilities. Defendants have carried out a course of conduct of
16 refusing to respond to, or correct complaints about unequal access
17 and have refused to comply with their legal obligations to make
18 the subject facility accessible pursuant to ADAAG. Such actions
19 and continuing course of conduct by Defendants, and each of them,
20 evidence despicable conduct in conscious disregard of the rights
21 and/or safety of Plaintiff and those similarly situated and thus
22 justify an award of treble damages or alternatively an award of
23 punitive damages in an appropriate amount.
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1 33. Plaintiff has suffered emotional and physical damage and
2 continues to suffer such damages all in an amount to be determined
3 at time of trial.

4
5 34. Plaintiff seeks an award of reasonable attorney's fees and
6 costs as a result of having to bring this action. Plaintiff
7 requests the court to award such fees in an appropriate amount.

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9
DEMAND FOR JURY

10 35. Plaintiff respectfully requests that the claims made herein be
11 heard and determined by a jury.

12
13 WHEREFORE PLAINTIFF PRAYS:

- 14 1. For general damages according to proof;
15 2. For special damages according to proof;
16 3. For Injunctive relief pursuant to 42 U.S.C. 12188(a)
17 4. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42
18 U.S.C. 1981, 42 U.S.C. 12205
19 5. For treble damages
20 6. For punitive damages according to proof;
21 7. For a Jury Trial;
22 8. For costs of suit incurred herein and;
23 9. For such other and further relief as the court deems proper.

24 Respectfully submitted,
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